

LYNCHBURG CITY COUNCIL REPORT

Meeting Date: January 15, 2001

Council Report # 11

Contact: G. Edward Miller

Report Writer: Robert E. White

Subject: Central Virginia Industries, Inc. Lease Agreement

Purpose of Action:

- Approval of lease agreement with Central Virginia Industries, Inc.

Requested Action: Adoption of a resolution authorizing a three year lease agreement with Central Virginia Industries, Inc., for space in the Kemper Street Station with the option to renew for two additional one year terms.

Prior Action: Review at Council worksession on December 11, 2001

Attachments: Lease Agreement

Resolution/Ordinance:

BE IT RESOLVED that the City Manager is authorized to execute a lease agreement with Central Virginia Industries, Inc. for the use of city owned property at 825 Kemper Street, known as the Kemper Street Station.

Adopted:

Certified: _____
Clerk of Council

010L

Other Information: This proposed lease agreement will allow Central Virginia Industries, Inc. to operate at Kemper Street Station. This lease is for three years, with two one-year options. Central Virginia Industries, Inc. will pay its share of utilities and janitorial services. The following is the lease schedule:

First year: \$700 per month
Second year: \$800 per month
Third year: \$900 per month
Option years: \$900 per month plus CPI

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and dated this _____ day of January 2002, by and between the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "CITY", and CENTRAL VIRGINIA INDUSTRIES, INC., a Virginia Corporation, hereinafter referred to as "CVI".

WITNESSETH:

WHEREAS, the CITY is currently leasing a facility known as the Kemper Street Station located at 825 Kemper Street, Lynchburg, Virginia from Kemper Street Partners, L.P., a Virginia limited partnership, and in its capacity as the Lessee of the Kemper Street Station the CITY is willing to sub-lease a portion of the building, hereinafter referred to as the "premises" to CVI and CVI desires to sub-lease a portion of the building from the City, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and conditions contained herein, the parties do hereby mutually covenant and agree as follows:

I. PREMISES

The CITY hereby leases and rents unto CVI, and CVI hereby accepts and rents from the CITY approximately 2,176 square feet of space on the upper (street) level of the Kemper Street Station. A drawing showing the area sub-leased to CVI is attached hereto as AExhibit A@ and by this reference made a part of this lease.

CVI shall use the premises solely for office space. The premises are not to be used for any other purpose whatsoever without the prior written consent of the CITY. However, CVI shall have the right to lease a portion of the premises to the law firm of Woods, Rogers & Hazlegrove in order that Woods, Rogers & Hazlegrove can provide legal services to CVI=s

members and to enable Woods, Rogers & Hazlegrove to provide legal services to its other clients in the Lynchburg area. The sub-lease between CVI and Woods, Rogers & Hazlegrove must be consistent with the terms and conditions of this lease. Except as provided above, CVI shall not sublet, sublease or assign any portion of the premises without the prior written consent of the CITY.

II. TERM

This lease shall be for an initial term of three (3) years beginning on the _____ day of January, 2002, and ending on the 31st day of December, 2005. Upon termination of the lease, CVI shall promptly and in good condition, surrender the premises to the CITY, ordinary wear and tear excepted. The CITY and CVI shall have the right to agree to extend the lease for two additional terms of one (1) year each upon such terms and conditions as are mutually acceptable and agreeable to the CITY and CVI. Each party shall send the other written notice of their desire to exercise the option to extend the term of the lease, such written notice shall be sent not less than sixty (60) days prior to the end of the then current term (initial or extended). It is understood that the CITY's ability to renew the lease for either or both of the additional one year terms is dependent upon the lease between the CITY and Kemper Street Partners being extended or the CITY acquiring fee-simple title to the Kemper Street Station.

III. RENT

CVI agrees to pay the CITY the following sums as rent for the premises:

- (a) For the first year of the lease the rent shall be \$700.00 per month.
- (b) For the second year of the lease the rent shall be \$800.00 per month.
- (c) For the third year of the lease the rent shall be \$900.00 per month.

(d) If the lease is extended for either or both of the additional one year terms the rental rates will be increased by the amount of the increases in the Consumer Price Index.

Rental payments shall be payable in advance, without notice or demand therefore, on or before the first day of each calendar month throughout the term of this lease. Rent for any period of less than one month shall be a pro-rata portion of the monthly payment. Payments of the rent and any other fees and charges due to the CITY under this lease shall be sent to Michael Gambone, Right-of- Way Agent/Property Manager, Lynchburg, VA 24505 or such other place or person as the City may from time to time designate.

If any of the fees and rents due under this lease are not paid on the due date, CVI shall pay the CITY a ten percent (10%) late penalty on the amount of such delinquent payment, which penalty shall at once become due and payable. In addition, CVI shall pay the CITY interest, at a rate equal to the prime lending rate as quoted in the Wall Street Journal on the due date for such delinquent payment, on the delinquent payment and the penalty. Such interest shall begin on the day following the due date for such delinquent payment and applicable penalty, and all interest shall be calculated on a 365-day year. In the event it becomes necessary for the CITY to institute legal proceedings to collect any of the rent, fees, penalty, interest or other charges payable under this lease, CVI agrees to pay all reasonable and necessary expenses incurred by the CITY in such legal proceedings, including but not limited to reasonable attorney=s fees and court costs.

IV. MAINTENANCE, REPAIRS AND IMPROVEMENTS TO THE PREMISES

(a) CVI has inspected the premises and agrees to accept the same in their current condition.

(b) The CITY shall have the right to enlarge or improve the premises during the

term of this lease but the CITY shall be under no duty or obligation to do so.

(c) CVI shall not make any improvements or alterations to the premises without the prior written approval of the CITY. Said improvements or alterations, if approved by the CITY are to be made at CVI=s expense unless otherwise agreed to by the CITY. Any improvements or alterations made to the premises by the CVI during the term of this lease must first be approved by the CITY, shall automatically become the property of the CITY at the end of the lease, and may not be removed from the premises without the prior written approval of the CITY. Any personal property brought onto the premises by CVI must be removed by CVI within thirty (30) days of the end of the lease. Any personal property not removed by CVI within thirty (30) day will automatically become the property of the CITY.

(d) During the term of this lease CVI shall provide routine day-to-day maintenance for the premises, shall replace light bulbs and broken glass and shall provide janitorial services for the premises at CVI=s expense. CVI shall maintain the premises in a clean, sanitary and safe condition and shall promptly remove all trash and debris from the premises. At the termination of this lease, the premises shall be returned to the CITY clean and in good condition, ordinary wear and tear excepted. CVI shall be responsible for repairing at its sole cost and expense any and all damages caused to the premises by its agents, employees, guests, patrons and any other persons CVI permits to be on the premises.

(e) During the term of the lease the CITY shall maintain and make all repairs and replacements to the structural supports, frame and roof of the building and shall maintain and repair the HVAC, electrical and plumbing systems.

(f) The CITY shall have the right to enter upon the premises at such times as the CITY, in its sole discretion, deems necessary to insure that CVI is meeting its maintenance and

upkeep obligations under this lease. If CVI fails to meet its maintenance and upkeep obligations after having been given written notice by the CITY to do so, the CITY shall have the right to enter the premises and perform the necessary maintenance and repairs, and CVI shall be responsible for the costs incurred by the CITY in performing such maintenance and repairs.

(g) CVI shall secure the premises during and after each daily use, including, without limitation, locking all windows and doors and extinguishing all lights and all other electrical appliances, and taking all appropriate security measures for the premises both during and after the CVI's regular office hours.

V. UTILITIES

CVI shall pay its proportionate share of the gas, electrical sewer and water charges for the premises. CVI's proportionate share of the utilities is 21% as determined by CVI's pro-rata square footage of the premises as compared to the total square footage of the building. The CITY will send CVI a bill for its share of the utilities and CVI shall pay the bill within thirty (30) days of its receipt.

CVI shall pay for all telephone and any other utility charges and all utility equipment arising from and needed for its use of the premises.

VI. DESTRUCTION OR DAMAGES OF PREMISES OR PROPERTY

If the premises shall be damaged or destroyed by fire, the elements, the public enemy or other casualty to the extent that the premises become untenable, the City shall have the option, at its sole discretion, of repairing the premises or terminating this lease without further obligation to CVI. In the event the lease is terminated the monthly rent shall be pro-rated as of the date the premises became untenable.

The CITY shall not be liable for any damage to or loss of any CVI's property or the property of any of its agents, employees, guests, patrons or tenants which is brought onto the premises regardless of how such damage or loss may occur. It is expressly agreed and understood that the CVI, its agents, employees, guests, patrons or tenants in bringing their property onto the premises, do so at their own risk.

XII. INSURANCE AND INDEMNIFICATION

(a) The CITY shall provide for all risk fire and casualty insurance coverage for the Kemper Street Station with the CITY named as the insured party on such insurance policy.

(b) If CVI desires insurance against loss or damage by fire (multi-peril coverage) to cover its property located on the premises including merchandise, inventory, equipment and business property, it shall be CVI's responsibility to obtain and maintain such insurance.

(c) CVI shall indemnify, hold harmless and assume the defense of the CITY, its agents, employees, and officials, from any and all liability, expenses, or claims which may be recovered from, or sought to be recovered from the CITY its employees, officials, and agents by reason of or on account of any property damage, injury or death of any person arising from CVI's occupancy and use of the premises. To effect the same, CVI agrees, at its expense, to obtain and keep in full force and effect at all times during its occupancy and use of the premises, comprehensive public liability insurance in at least the amount of \$1,000,000, combined single limited coverage against general public liability for injuries to or death of persons or damage to property. Such insurance policies shall also name the CITY, its employees, officials and agents as insured parties. CVI shall furnish the City's Risk Management Division with a copy of said insurance policy or certificate showing the insurance coverage to be in full force and effect before occupying the premises. Such insurance policy or

certificate shall contain provisions providing that the CITY shall be given 30 days prior written notice of any cancellation or reduction in the required coverage. The insurance required hereunder shall be primary and any insurance or self-insurance maintained by the CITY shall be in excess of and shall not contribute with the insurance provided by CVI under this lease. Any deductibles or self-insurance retentions applicable to the required coverage shall be paid by CVI and the CITY shall not be required to participate therewith. All rights of subrogation against the CITY shall be waived. Each year this lease remains in effect CVI shall provide the CITY's Risk Management Division with a copy of a current insurance policy or a certificate of insurance showing the insurance coverage is still in full force and effect.

VIII. NONDISCRIMINATION

CVI agrees that in the occupancy and use of the premises it will not, on the grounds of race, color, sex, national origin or disability, discriminate or permit discrimination against any person or groups of persons.

IX. NOTICE

Notices to the CVI under this Agreement shall be sufficient if sent, by registered mail, postage prepaid, addressed to the William H. Cooper, President of CVI, Inc., 825A Kemper Street, Lynchburg, VA 24502, or to such other persons or address as CVI may designate in writing from time to time. Notices to the CITY shall be sufficient if mailed, by registered, postage prepaid, addressed to the L. Kimball Payne, Lynchburg City Manager, P.O. Box 60, or to such other persons or address as the CITY may designate in writing from time to time.

X. ENVIRONMENTAL COMPLIANT

(a) For purposes of this Lease:

(i) The term "Environmental Laws" shall mean and include the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Lynchburg, Virginia 24505, Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and all applicable state and local environmental laws, ordinances, rules, requirements, regulations and publications, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted and any and all other federal, state or local laws, ordinances, rules, requirements, regulations and publications, now or hereafter existing, relating to the preservation or regulation of the public health, welfare or environment or the regulation or control of toxic or hazardous substances or materials;

(ii) The term "Regulated Substance" shall mean and include any, each and all substances or materials now or hereafter regulated pursuant to any Environmental Laws, including, but not limited to, any such substance or material now or hereafter defined as or deemed to be a "regulated substance..... pesticide," "hazardous substance" or "hazardous waste" or included in any similar or like classification or categorization thereunder;

(iii) The term "Governmental Unit@ shall mean any federal or governmental legislative, executive or judicial body charged with the enforcement, implementation or interpretation of any Environmental Law;

(b) CVI shall:

(i) not cause or permit any Regulated Substance to be placed, held, located, released, transported or disposed of on, under, at or from the premises in violation of Environmental Laws;

(ii) contain at or remove from the premises, or perform any other necessary remedial action regarding, any Regulated Substance in any way affecting the premises if, as and when such containment, removal or other remedial action is required, but only to the extent required by a Governmental Unit, pursuant to an applicable Environmental Law. If not required, CVI, at its election, may conduct such remedial action, but any containment, removal or remediation of any kind involving any Regulated Substance in any way adversely affecting the premises shall be in compliance with all Environmental Laws and, if the CITY shall reasonably believe that any environmental concern exists with respect to the premises, then, upon request of the CITY which request shall be made no more than once per year, CVI shall arrange for periodic Phase I environmental audits (as such term is defined now or hereafter by the environmental remediation industry), or such further testing or actions as may be required by Environmental Laws, to be conducted at the premises by qualified companies specializing in environmental matters and reasonably satisfactory to the CITY in order to ascertain compliance with all Environmental Laws and the requirements of this Lease, all of the foregoing to be at CVI's sole cost and expense;

(iii) provide the CITY with written notice (and a copy as may be applicable) of any of the following within ten (10) days of receipt thereof: (A) The CITY's obtaining knowledge or notice of any kind of the material presence, or any actual or threatened release, of any Regulated Substance in any way adversely affecting the premises; (B) CVI's receipt or submission, or CVI's obtaining knowledge or notice of any kind, of any report, citation, notice or other communication from or to any federal, state or local governmental or quasi-governmental authority regarding any Regulated Substance in any way adversely affecting the premises; or (A) CVI's obtaining knowledge or notice of any kind of the incurrence of any

cost or expense by any federal, state or local governmental or quasi-governmental authority or any private party in connection with the assessment, monitoring, containment, removal or remediation of any kind of any Regulated Substance in any way adversely affecting the premises, or of the filing or recording of any lien on the premises or any portion thereof in connection with any such action or Regulated Substance in any way adversely affecting the premises; and

(iv) In addition to the requirements of Section XII. Insurance and Indemnification hereof, defend all actions against the CITY and Kemper Street Partners, L.P., and pay, protect, indemnify and save harmless the CITY and Kemper Street Partners, L.P. from and against any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature relating to any Environmental Laws, Regulated Substances or other environmental matters concerning the premises. The indemnity contained in this Section shall survive the expiration or earlier termination of this lease.

XI. GENERAL PROVISIONS

(a) Marginal headings contained in this lease are for convenience only and shall not be considered to amplify, relate, modify or otherwise affect any of the terms, provisions or conditions of this lease.

(b) This lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

(c) All terms and conditions with respect to this lease are expressly contained herein, and both parties agree that no representative or agent of the CITY or CVI have made any representation or promise with respect to this lease not expressly contained herein.

(d) In the event that any provision of this lease shall be construed to be invalid or unenforceable, then the remaining portions shall remain in full force and effect.

(e) CVI agrees to observe and obey during the term of this lease all federal, state and local laws, ordinances, rules and regulations currently in force or subsequently adopted that apply to its occupancy and use of the premises.

(f) In the event CVI fails to perform any of the terms and conditions required by this lease and fails to remedy such default within a period of thirty (30) days after receipt from the CITY of a written notice to remedy the same, the CITY shall have the right to cancel this Agreement without additional notice to CVI. Notwithstanding the foregoing, the CITY shall have the right to immediately cancel this lease without giving any prior notice to CVI if CVI fails to maintain the insurance required in Section VII. Insurance and Indemnification. No waiver of default by the CITY of any of the terms or conditions of this lease to be kept or performed by the CVI shall be considered to be or act as a waiver in the event of any subsequent default of such terms and conditions by the CVI.

(g) CVI will not install any signs on the interior or exterior of the premises without the prior written approval of the CITY.

(h) CVI shall not use the elevator that is located in the Kemper Street Station without the prior approval of the City.

(I) Michael Gambone, the City's Right-of-Way Agent/Property Manager is hereby designated as the CITY official that is responsible for the enforcement of the provisions of this lease and to represent the CITY in its dealings with the CVI in connection with this lease.

(j) If CVI remains in possession of the premises after the expiration or termination of this lease, CVI shall be deemed to be occupying the premises as a month-to-month tenant, subject to all of the conditions, provisions and obligations of this lease insofar as they are applicable to a month-to-month tenancy.

IN TESTIMONY WHEREOF, the CITY has caused its name to be subscribed hereto by L. Kimball Payne, its City Manager, and the CVI has caused its name to be subscribed hereto by William H. Copper, its President/Treasurer, all as of the day and year first above written.

CITY OF LYNCHBURG

BY _____
L. Kimball Payne, City Manager

CENTRAL VIRGINIA INDUSTRIES, INC.

BY _____
William H. Cooper, President/Treasurer